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Quid Pro Quo: To What Extent Can States Implement Efficiency Standards on Individual Water Rights Under the Prior Appropriation Doctrine?

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Quid Pro Quo: To what extent can states implement efficiency standards on individual water rights under the prior appropriation doctrine?

Under the prior appropriations doctrine, water can be transferred. Marketing water from inefficient uses to municipal or other uses which put water to a higher economic benefit has been viewed in academics as a way of improving utilization of the resource. Additionally, transferring water to municipalities has been viewed as the panacea for the West, as markets potentially can reallocate water. Despite their best efforts to purchase water, most western cities have been unable to obtain adequate water for their future needs. Simply stated, municipalities need other uses to sell them water or water rights. One proposal for facilitating a transfer of water or water rights is to redefine waste under the doctrine of prior appropriations. Such an initiative would eliminate inefficient uses and/or practices. Subsequently, water previously used for these purposes may become available on the open market.

Can rules eliminating uses previously accepted as beneficial be implemented after a water right has been perfected? What extent can efficiency standards be imposed on an existing water right? When, if ever would either of these circumstances invoke the takings clause?

This work will attempt to address these issues in a case study involving California.